IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 540 OF 2006

MANOHAR S/o. BABURAO BHOSALE ... Appellant
VS.
MUNICIPAL CORPN. OF
Gr. MUMBAI AND ORS. ... Respondents

Mr. S. K. Chaurasia i/b. A. M. SARAOGI for appellant
Ms. Geeta Joglekar for BMC.
Mr. Abhijeet Wagh i/b. M/S. UTANGALE AND CO., for respondents no.3.
Mr. G.P. Mulekar G.P. For respondent nos. 2 and 4.
Mr. Abhay D. Parab for respondent no.5.

CORAM: D. G. KARNIK **J.**

DATE: 8th November 2006

P.C.:

1. Heard learned counsel for the appellant and respondents.
2. Learned counsel for the respondent raises a preliminary objection and submit that the suit was filed without statutory notice under section 527 of the Mumbai Municipal Corporation Act (for short the MMC Act). Hence the suit is not maintainable and no prima facie case is made out. Admittedly no notice under section 527 of MMC Act has been issued. Learned counsel for the appellant, when asked, stated that the cause of action arose for the suit some where

in May 2006. The suit appears to have been filed in July 2006. There was enough time to issue the statutory notice under section 527 of the MMC Act before filing of the suit. The plaint does not even mention when the cause of action arose and why the statutory notice could not be issued. In the circumstances, the submission of learned counsel for the respondent no.1 that the suit itself is not maintainable without notice is prima facie correct. In the absence of notice suit would not be maintainable. The appellant therefore has not made out a prima facie case about the maintainability of the suit, as laid down by the Supreme Court in the case of Shri **Shiv Kumar Chadha vs. Delhi Municipal Corporation & ors.**, reported in (1993) 3 SCC 161.

3. For these reasons the trial judge was right in refusing the relief of injunction. There is no merit in this appeal which is hereby dismissed.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
Civil application No. 695 of 2006
in
A. O. NO. 540 OF 2006

MANOHAR S/o. BABURAO BHOSALE ... Appellant
VS.
MUNICIPAL CORPN. OF
Gr. MUMBAI AND ORS. ... Respondents

Mr. S. K. Chaurasia i/b. A. M. SARAOGI for appellant
Ms. Geeta Joglekar for BMC.
Mr. Abhijeet Wagh i/b. M/S. UTANGALE AND CO., for respondents no.3.
Mr. G.P. Mulekar G.P. For respondent nos. 2 and 4.
Mr. Abhay D. Parab for respondent no.5.

CORAM: D. G. KARNIK **J.**

DATE: 8th November 2006

P.C.:

In view of the disposal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)